

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

NICOLE WELLS

Applicant for Registered Nurse License

Respondent

Case No. 2012 – 457

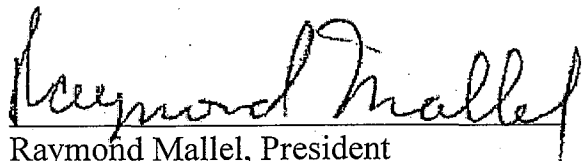
OAH No. 2012020990

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on August 30, 2012.

IT IS SO ORDERED July 31, 2012.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
12 Against:

13 **NICOLE WELLS**
14 **6943 Woodmere Drive**
Riverside, CA 92509

15 Respondent.

Case No. 2012-457

OAH No. 2012020990

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Interim Executive Officer of the
21 Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Amanda Dodds, Senior Legal Analyst.

24 2. Respondent Nicole Wells (Respondent) is representing herself in this proceeding and
25 has chosen not to exercise her right to be represented by counsel.

26 3. On or about May 11, 2011, Respondent filed an application dated May 5, 2011, with
27 the Board of Registered Nursing to obtain a Registered Nurse License.

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CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that the application of Respondent Nicole Wells for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of three (3) years on the following conditions:

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

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1 3. **Report in Person.** Respondent, during the period of probation, shall appear in
2 person at interviews/meetings as directed by the Board or its designated representatives.

3 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency or
4 practice as a registered nurse outside of California shall not apply toward a reduction of this
5 probation time period. Respondent's probation is tolled, if and when she resides outside of
6 California. Respondent must provide written notice to the Board within 15 days of any change of
7 residency or practice outside the state, and within 30 days prior to re-establishing residency or
8 returning to practice in this state.

9 Respondent shall provide a list of all states and territories where she has ever been licensed
10 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide
11 information regarding the status of each license and any changes in such license status during the
12 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing
13 license during the term of probation.

14 5. **Submit Written Reports.** Respondent, during the period of probation, shall submit
15 or cause to be submitted such written reports/declarations and verification of actions under
16 penalty of perjury, as required by the Board. These reports/declarations shall contain statements
17 relative to Respondent's compliance with all the conditions of the Board's Probation Program.
18 Respondent shall immediately execute all release of information forms as may be required by the
19 Board or its representatives.

20 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every
21 state and territory in which she has a registered nurse license.

22 6. **Function as a Registered Nurse.** Respondent, during the period of probation, shall
23 engage in the practice of registered nursing in California for a minimum of 24 hours per week for
24 6 consecutive months or as determined by the Board.

25 For purposes of compliance with the section, "engage in the practice of registered nursing"
26 may include, when approved by the Board, volunteer work as a registered nurse, or work in any
27 non-direct patient care position that requires licensure as a registered nurse.

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1 The Board may require that advanced practice nurses engage in advanced practice nursing
2 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

3 If Respondent has not complied with this condition during the probationary term, and
4 Respondent has presented sufficient documentation of her good faith efforts to comply with this
5 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an
6 extension of Respondent's probation period up to one year without further hearing in order to
7 comply with this condition. During the one year extension, all original conditions of probation
8 shall apply.

9 **7. Employment Approval and Reporting Requirements.** Respondent shall obtain
10 prior approval from the Board before commencing or continuing any employment, paid or
11 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
12 performance evaluations and other employment related reports as a registered nurse upon request
13 of the Board.

14 Respondent shall provide a copy of this Decision to her employer and immediate
15 supervisors prior to commencement of any nursing or other health care related employment.

16 In addition to the above, Respondent shall notify the Board in writing within seventy-two
17 (72) hours after she obtains any nursing or other health care related employment. Respondent
18 shall notify the Board in writing within seventy-two (72) hours after she is terminated or
19 separated, regardless of cause, from any nursing, or other health care related employment with a
20 full explanation of the circumstances surrounding the termination or separation.

21 **8. Supervision.** Respondent shall obtain prior approval from the Board regarding
22 Respondent's level of supervision and/or collaboration before commencing or continuing any
23 employment as a registered nurse, or education and training that includes patient care.

24 Respondent shall practice only under the direct supervision of a registered nurse in good
25 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods
26 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are
27 approved.

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Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

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Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed revocation of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

12. **License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license

1 has been surrendered may petition the Board for reinstatement no sooner than the following
2 minimum periods from the effective date of the disciplinary decision:

3 (1) Two years for reinstatement of a license that was surrendered for any reason other
4 than a mental or physical illness; or

5 (2) One year for a license surrendered for a mental or physical illness.

6 13. **Physical Examination.** Within 45 days of the effective date of this Decision,
7 Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician
8 assistant, who is approved by the Board before the assessment is performed, submit an
9 assessment of the Respondent's physical condition and capability to perform the duties of a
10 registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If
11 medically determined, a recommended treatment program will be instituted and followed by the
12 Respondent with the physician, nurse practitioner, or physician assistant providing written reports
13 to the Board on forms provided by the Board.

14 If Respondent is determined to be unable to practice safely as a registered nurse, the
15 licensed physician, nurse practitioner, or physician assistant making this determination shall
16 immediately notify the Board and Respondent by telephone, and the Board shall request that the
17 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall
18 immediately cease practice and shall not resume practice until notified by the Board. During this
19 period of suspension, Respondent shall not engage in any practice for which a license issued by
20 the Board is required until the Board has notified Respondent that a medical determination
21 permits Respondent to resume practice. This period of suspension will not apply to the reduction
22 of this probationary time period.

23 If Respondent fails to have the above assessment submitted to the Board within the 45-day
24 requirement, Respondent shall immediately cease practice and shall not resume practice until
25 notified by the Board. This period of suspension will not apply to the reduction of this
26 probationary time period. The Board may waive or postpone this suspension only if significant,
27 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
28 by Respondent to obtain the assessment, and a specific date for compliance must be provided.

1 Only one such waiver or extension may be permitted.

2 **14. Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

3 Respondent, at her expense, shall successfully complete during the probationary period or shall
4 have successfully completed prior to commencement of probation a Board-approved
5 treatment/rehabilitation program of at least six months duration. As required, reports shall be
6 submitted by the program on forms provided by the Board. If Respondent has not completed a
7 Board-approved treatment/rehabilitation program prior to commencement of probation,
8 Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
9 If a program is not successfully completed within the first nine months of probation, the Board
10 shall consider Respondent in violation of probation.

11 Based on Board recommendation, each week Respondent shall be required to attend at least
12 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
13 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
14 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
15 added. Respondent shall submit dated and signed documentation confirming such attendance to
16 the Board during the entire period of probation. Respondent shall continue with the recovery plan
17 recommended by the treatment/rehabilitation program or a licensed mental health examiner
18 and/or other ongoing recovery groups.

19 **15. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
20 completely abstain from the possession, injection or consumption by any route of all controlled
21 substances and all psychotropic (mood altering) drugs, including alcohol, except when the same
22 are ordered by a health care professional legally authorized to do so as part of documented
23 medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14)
24 days, by the prescribing health professional, a report identifying the medication, dosage, the date
25 the medication was prescribed, the Respondent's prognosis, the date the medication will no
26 longer be required, and the effect on the recovery plan, if appropriate.

27 Respondent shall identify for the Board a single physician, nurse practitioner or physician
28 assistant who shall be aware of Respondent's history of substance abuse and will coordinate and

1 monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-
2 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
3 to the Board on a quarterly basis Respondent's compliance with this condition. If any substances
4 considered addictive have been prescribed, the report shall identify a program for the time limited
5 use of any such substances.

6 The Board may require the single coordinating physician, nurse practitioner, or physician
7 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
8 medicine.

9 16. **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a
10 random, biological fluid testing or a drug screening program which the Board approves. The
11 length of time and frequency will be subject to approval by the Board. Respondent is responsible
12 for keeping the Board informed of Respondent's current telephone number at all times.
13 Respondent shall also ensure that messages may be left at the telephone number when she is not
14 available and ensure that reports are submitted directly by the testing agency to the Board, as
15 directed. Any confirmed positive finding shall be reported immediately to the Board by the
16 program and Respondent shall be considered in violation of probation.

17 In addition, Respondent, at any time during the period of probation, shall fully cooperate
18 with the Board or any of its representatives, and shall, when requested, submit to such tests and
19 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
20 hypnotics, dangerous drugs, or other controlled substances.

21 If Respondent has a positive drug screen for any substance not legally authorized and not
22 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
23 files a petition to revoke probation or an accusation, the Board may suspend Respondent from
24 practice pending the final decision on the petition to revoke probation or the accusation. This
25 period of suspension will not apply to the reduction of this probationary time period.

26 If Respondent fails to participate in a random, biological fluid testing or drug screening
27 program within the specified time frame, Respondent shall immediately cease practice and shall
28 not resume practice until notified by the Board. After taking into account documented evidence

1 of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may
2 suspend Respondent from practice pending the final decision on the petition to revoke probation
3 or the accusation. This period of suspension will not apply to the reduction of this probationary
4 time period.

5 **17. Mental Health Examination.** Respondent shall, within 45 days of the effective date
6 of this Decision, have a mental health examination including psychological testing as appropriate
7 to determine her capability to perform the duties of a registered nurse. The examination will be
8 performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by
9 the Board. The examining mental health practitioner will submit a written report of that
10 assessment and recommendations to the Board. All costs are the responsibility of Respondent.
11 Recommendations for treatment, therapy or counseling made as a result of the mental health
12 examination will be instituted and followed by Respondent.

13 If Respondent is determined to be unable to practice safely as a registered nurse, the
14 licensed mental health care practitioner making this determination shall immediately notify the
15 Board and Respondent by telephone, and the Board shall request that the Attorney General's
16 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
17 practice and may not resume practice until notified by the Board. During this period of
18 suspension, Respondent shall not engage in any practice for which a license issued by the Board
19 is required, until the Board has notified Respondent that a mental health determination permits
20 Respondent to resume practice. This period of suspension will not apply to the reduction of this
21 probationary time period.

22 If Respondent fails to have the above assessment submitted to the Board within the 45-day
23 requirement, Respondent shall immediately cease practice and shall not resume practice until
24 notified by the Board. This period of suspension will not apply to the reduction of this
25 probationary time period. The Board may waive or postpone this suspension only if significant,
26 documented evidence of mitigation is provided. Such evidence must establish good faith efforts
27 by Respondent to obtain the assessment, and a specific date for compliance must be provided.
28 Only one such waiver or extension may be permitted.

18. **Therapy or Counseling Program.** Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

3/24/12

NICOLE WELLS
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated:

3/27/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

Amanda Bodde

AMANDA DODDS
Senior Legal Analyst
Attorneys for Complainant

Exhibit A

Statement of Issues No. 2012-457

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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. **2012-457**

13 **NICOLE WELLS**
14 **6943 Woodmere Drive**
Riverside, CA 92509

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about May 11, 2011, the Board of Registered Nursing, Department of
23 Consumer Affairs received an application for a Registered Nurse License from Nicole Wells
24 (Respondent). On or about May 5, 2011, Nicole Wells certified under penalty of perjury to the
25 truthfulness of all statements, answers, and representations in the application. The Board denied
26 the application on October 5, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3)(A) Done any act that if done by a licentiate of the business or profession in
2 question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the crime
4 or act is substantially related to the qualifications, functions, or duties of the business
5 or profession for which application is made.

6 (b) Notwithstanding any other provision of this code, no person shall be denied
7 a license solely on the basis that he or she has been convicted of a felony if he or she
8 has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with
9 Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been
10 convicted of a misdemeanor if he or she has met all applicable requirements of the
11 criteria of rehabilitation developed by the board to evaluate the rehabilitation of a
12 person when considering the denial of a license under subdivision (a) of Section 482.

13 (c) A board may deny a license regulated by this code on the ground that the
14 applicant knowingly made a false statement of fact required to be revealed in the
15 application for the license.

16 7. Section 493 of the Code states:

17 Notwithstanding any other provision of law, in a proceeding conducted by a
18 board within the department pursuant to law to deny an application for a license or to
19 suspend or revoke a license or otherwise take disciplinary action against a person who
20 holds a license, upon the ground that the applicant or the licensee has been convicted
21 of a crime substantially related to the qualifications, functions, and duties of the
22 licensee in question, the record of conviction of the crime shall be conclusive
23 evidence of the fact that the conviction occurred, but only of that fact, and the board
24 may inquire into the circumstances surrounding the commission of the crime in order
25 to fix the degree of discipline or to determine if the conviction is substantially related
26 to the qualifications, functions, and duties of the licensee in question.

27 As used in this section, "license" includes "certificate," "permit," "authority,"
28 and "registration."

8. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or
deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

....

(f) Conviction of a felony or of any offense substantially related to the
qualifications, functions, and duties of a registered nurse, in which event the record of
the conviction shall be conclusive evidence thereof.

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1 (d) Any conviction or act subject to an order of registration pursuant to Section
2 290 of the Penal Code.

3 12. California Code of Regulations, title 16, section 1445 states:

4 (a) When considering the denial of a license under Section 480 of the code,
5 the board, in evaluating the rehabilitation of the applicant and his/her present
6 eligibility for a license will consider the following criteria:

7 (1) The nature and severity of the act(s) or crime(s) under consideration as
8 grounds for denial.

9 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s)
10 under consideration as grounds for denial which also could be considered as grounds
11 for denial under Section 480 of the code.

12 (3) The time that has elapsed since commission of the act(s) or crime(s)
13 referred to in subdivision (1) or (2).

14 (4) The extent to which the applicant has complied with any terms of parole,
15 probation, restitution, or any other sanctions lawfully imposed against the applicant.

16 (5) Evidence, if any, of rehabilitation submitted by the applicant.

17

18 **FIRST CAUSE FOR DENIAL OF APPLICATION**

19 **(July 6, 2011 Criminal Conviction for DUI on December 14, 2010)**

20 13. Respondent's application is subject to denial under sections 480, subdivisions
21 (a)(1) and (a)(3)(A) of the Code in that she was convicted of a crime substantially related to the
22 qualifications, duties, and functions of a registered nurse, which would be a ground for discipline
23 for a licensed registered nurse under section 2761, subdivision (f) of the Code. The
24 circumstances are as follows:

25 a. On or about July 6, 2011, in a criminal proceeding entitled *People of the*
26 *State of California v. Nicole Wells*, in Riverside County Superior Court, case number
27 RIM1102144, Respondent was convicted on her plea of guilty to violating Vehicle Code section
28 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
a misdemeanor. Respondent admitted and the court found true the special allegation that
Respondent's BAC was .15 percent or more, pursuant to Vehicle Code section 23578. The plea
agreement dismissed an additional count of violating Vehicle Code section 23152, subdivision

1 (a), driving under the influence of alcohol.

2 b. As a result of the conviction, on or about July 6, 2011, Respondent was
3 granted 36 months summary probation and ordered to serve 20 days in the custody of the
4 Riverside County Sheriff, with credit for one day. Nineteen days were ordered to be served in the
5 Work Release Program. Respondent was further ordered to complete a nine-month First
6 Offender DUI Program, pay \$2,148.45 in fees, fines and restitution, and comply with standard
7 DUI probation conditions.

8 c. The facts that led to the conviction were that at approximately 2:36 in the
9 morning, on or about December 14, 2010, a California Highway Patrol (CHP) officer conducted a
10 traffic stop after he observed Respondent's vehicle stopped past the limit line at an intersection,
11 and blocking cross traffic. The officer contacted Respondent and observed that Respondent's
12 eyes were bloodshot, her speech was slurred, and she had a strong odor of an alcoholic beverage
13 on her breath. Respondent was unable to complete a series of field sobriety tests as explained and
14 demonstrated by the CHP officer. Based on her driving, her performance on the field sobriety
15 tests, her objective symptoms on intoxication, and her admission to consuming alcohol,
16 Respondent was arrested for driving under the influence. During booking at the Riverside County
17 Jail, Respondent provided a blood sample that was analyzed with a BAC of .24 percent.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

20 14. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
21 of the Code in that on or about December 14, 2010, Respondent used alcoholic beverages to an
22 extent or in a manner that was dangerous and injurious to herself and the public when she
23 operated a motor vehicle while significantly impaired by alcohol, with a BAC three times the
24 legal limit, as described in paragraph 13, above. Such conduct would be a ground for discipline
25 under section 2762, subdivision (b) of the Code for a licensed registered nurse.

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1 **THIRD CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**

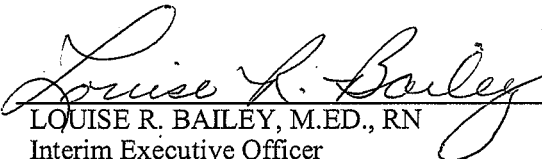
3 15. Respondent's application is subject to denial under sections 480, subdivision (a)(3)(A)
4 of the Code in that on or about July 6, 2011, Respondent was convicted of a criminal offense
5 involving the consumption of alcohol as described in paragraph 13, above. Such conduct would
6 be a ground for discipline under section 2762, subdivision (b) of the Code for a licensed
7 registered nurse.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Registered Nursing issue a decision:

- 11 1. Denying the application of Nicole Wells for a Registered Nurse License;
12 2. Taking such other and further action as deemed necessary and proper.

13
14 DATED: February 21, 2012



LOUISE R. BAILEY, M.ED., RN

Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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